SINGAPORE REPORTS

GOH PIT LENG v. SINGAPORE POOLS (PRIVATE) LTD. & ORS.

[C.A. (Wee Chong Jin C.J., Tan Ah Tah and D'Cotta JJ.)
January 16, 1973]

[Singapore — Civil Appeal No. 34 of 1972]

Practice and Procedure — Appeal — Question of fact — Appellate court reluctant to interfere with findings of fact.

Gaming — Toto — Modus operandi.

This was an appeal against the judgment of the High Court dismissing the appellant's claim to a second prize in a game of toto run by the Singapore Pools (Private) Ltd. The issue before the trial court was whether the appellant had betted on, paid for and delivered the A, B and C portions of the toto coupon to the 2nd defendant's firm which the appellant said he did. The learned trial judge having heard evidence from both sides found that the appellant did not because he was satisfied that the appellant was not a witness of truth.

Held: it is an accepted principle that in a case before an appellate court where the issue is a finding of fact by the trial judge an appellate court is always reluctant to interfere with such finding for the simple reason that the trial judge had the advantage of seeing and testing the veracity of the witnesses before him unless of course it can be shown that the judgment was plainly wrong or unsupported by evidence. In this case the appeal must be dismissed as there was sufficient evidence before the trial judge to satisfy him in accepting the second respondents' evidence that they never received the A, B, C portions of the coupon back from the appellant.

Cases referred to:-

(1) *Watt or Thomas* v. *Thomas* [1947] A.C. 487.

(2) *Hontestroom (S.S.)* v. *Durham Castle (S.S.)* [1927] A.C. 37.

COURT OF APPEAL.

J. B. Jeyaratnam for the appellant.

Chan Ngiap Seng for the first respondent.

R. Ramason for the second respondents.

D'Cotta J. (delivering judgment of the court): The appellant (hereinafter referred to as the plaintiff) in this case, one Goh Pit Leng appeals against the judgment of the High Court dismissing his claim to a 2nd Prize in the Singapore Pools (Private) Ltd. betting game popularly known as toto in Draw No. 11/68 drawn on the 18th August, 1968. At the conclusion of the hearing we dismissed the appeal indicating that we would give our reasons in writing. We now proceed to do so.

Toto is a pool betting game operated by Singapore Pools (Private) Ltd. and was first introduced into Singapore in June 1968. It is one of the different games of pool betting whereby out of a spinning sphere with 49 numbered balls six balls plus an additional one are drawn out. The drawings are held weekly and in public. A person desirous of participating in this game of toto must obtain a coupon which is available from all post offices or from a registered toto agent. A coupon contains 2 entries and 3 portions A, B and C. Each entry is divided into 49 chronological numbered squares and a participant is required to cross out any 6 numbers on his entry and if he crosses any three, four, five or five plus the additional one and these tally with the numbers drawn then he is entitled to receive a prize the amount of which will depend on how many numbers he has crossed out correctly. If a participant forecasts six numbers correctly he would be entitled to the 1st prize. On completing his coupon the participant should then go to the toto agent and on payment of 50 cents as stake fee for each entry the agent will affix a control stamp on the coupon after which he will retain the B and C portions of the coupon and hand back to the participant the A portion.

According to the rules of the game a person shall qualify as a participant —

(a) if he fills in correctly a coupon, submits it to an authorised agent, and pays out the respective stake and coupon and service fee;

(b) if Parts B and C of his coupon have in advance of the drawing been delivered for safe-keeping at the premises of the Singapore Pools (Private) Ltd.

If the B and C portions of the coupons have not reached the premises of Singapore Pools (Private) Ltd. within the time limit and if they had not been put in safe-keeping in the presence of a specially appointed commission, they shall be declared invalid and such coupons shall not be considered at the distribution of the winnings. It is incumbent upon the agent to deliver the B and C portions of a participant's coupon to the premises of Singapore Pools (Private) Ltd. within the time limit, in any event before the particular draw takes place. The rules for participation in themselves constitute a contract between Singapore Pools (Private) Ltd. and the participant which contract is considered as agreed upon between the two parties the moment Parts B and C of the participant's coupon are received and put into safe-keeping at the premises of Singapore Pools (Private) Ltd. Each coupon will contain an agent's number which is put on the coupon by the agents themselves and allotted by Singapore Pools (Private) Ltd. Also shown on the coupon is a printed serial number and a control stamp number affixed by the agent whenever he receives the stake money from the participant.

The plaintiff, a proof reader at Nanyang Siang Pau Press Ltd. Robinson Road, was acquainted with the game of toto and used to purchase his coupons from the second defendants who are registered toto agents. The second defendants, Chin Ann Trading Co. Ltd. are run by four brothers, Law Kam Hock, Law Kam Lim, Law Kam Siong and Law Kam Chuan. They work with the plaintiff in the Nanyang Siang Pau in the same building as colleagues in different departments.

The plaintiff's version at the trial was as follows: — On the 12th August 1968 between 6-7 p.m. the plaintiff was at his desk in his office when Law Kam Hock came up to him and asked if he was desirous of purchasing toto coupons. The plaintiff asked for 3 coupons and having obtained these coupons the plaintiff marked all the 3 coupons. According to the plaintiff while he was marking them, Law Kam Hock stood next to him and after marking the coupons the plain-

tiff handed them back to Law Kam Hock who left the plaintiff but returned after a short while and handed to the plaintiff the three A portions of the three coupons which he received from the plaintiff. The draw took place on the 18th August 1968. The plaintiff having compared the winning numbers with his forecasts discovered that out of the 3 coupons purchased from Law Kam Hock one of them had won the 2nd prize. He told the good news to one of his colleagues as well as Law Kam Lim brother of Kam Hock and managing director of the second defendants' firm. The next day the plaintiff went to the second defendants' office at Cecil Street and saw the three Law brothers but not Law Kam Hock from whom he had purchased the coupons. They were very happy on hearing that the plaintiff had struck a prize and suggested to him that he should give them a treat. One of the Law brothers, Law Kam Chuan asked the plaintiff to sign the winning coupon and told the plaintiff he would accompany him to the toto office on Wednesday to claim the prize. The plaintiff signed the winning coupon as suggested and added to it his identity card number. Law Kam Chuan said this was to ensure that it would not get lost. On Tuesday, 20th August 1968, the plaintiff's colleagues drew his attention to a news item in the *Malay Mail* which stated that although the 1st prize in the draw was won, the 2nd prize had not been won. The plaintiff was shocked. He telephoned the second defendants' office and spoke to one Philip Law (brother of Law Kam Hock) and asked him how was it that the 2nd prize was reported as not being won. Philip Law told him to make enquiries at the office of the first defendant, Singapore Pools (Private) Ltd. At about 2 p.m. the plaintiff accompanied by three or four of his colleagues went to the office of the first defendant and there he interviewed a Bulgarian official who examined the coupon, went into another room and returned a little while later and informed the plaintiff that although it was a winning coupon nevertheless the first defendant did not have the B and C portions of the said winning coupon. The plaintiff then left the office with his friends but returned later in the afternoon. This time they interviewed an Indian gentleman who told them that the second defendants had reported on Saturday, prior to the draw, that the B and C portions of the plaintiff's winning coupon were missing and he further told the plaintiff that he could not succeed on his claim. On hearing this the plaintiff went to see his solicitors for the purpose of instituting proceedings.

According to the defence, Law Kam Hock obtained on the 16th August 1968 coupons from his brother Philip Law for the 11th Draw. Philip Law is the person in the second defendants' firm in charge of toto transactions. Law Kam Hock received 60 coupons No. 100001 to 100060 already chopped and with control stamps affixed. He took them to Nanyang Siang Pau's office and at some time between 3-4 p.m. the same evening he sold 4 coupons bearing Nos. 100026 to 100029 to the plaintiff. He knew the plaintiff well and the plaintiff was a friend of the family. At times the plaintiff and Law Kam Hock would go out together and the plaintiff would go to the second defendants' office to play mahjong. On giving the plaintiff four coupons Law Kam Hock asked him to mark them and return them to him. The plaintiff replied that he was not free and asked Law Kam Hock to come back later and collect them. All these coupons had control stamps affixed to them. After selling the coupons to the plaintiff Law Kam Hock went to his other colleagues in the office and sold some toto coupons to them also. In fact on the 16th and 17th August Law Kam Hock sold all his 60 coupons. At about 8 p.m. on the 16th August Law Kam Hock contacted the plaintiff. When he approached the plaintiff, the plaintiff took out the 4 coupons which he had earlier obtained from him and of these four coupons, two (Nos. 100027 and 100029) were already marked. The plaintiff returned one coupon No. 100028 to Law Kam Hock saying he did not want to bet on it. The plaintiff then asked Law Kam Hock if he could take one coupon home to mark, that coupon being No. 100026, the alleged winning coupon. Law Kam Hock told the plaintiff he could do so but he must return it before 5 p.m. on the 17th August 1968 and if he did not do so he would have to report to his younger brother Philip Law who in turn would have to report it to the first defendant. At about 3-4 p.m. on the 17th August, Lam Kam Hock asked the plaintiff for the return of coupon No. 100026 but the plaintiff told him that he had spoilt it because someone in his house had crossed it wrongly. He promised Law Kam Hock to return it the next day because he forgot to bring it that day. Law Kam Hock told him to make sure to return the coupon to him. At about 3-4 p.m. on the 18th August Law Kam Hock again asked the plaintiff for the coupon but the plaintiff once again said he forgot to bring it but would do so on Monday. Law Kam Hock insisted on the return of the coupon despite the fact that it was spoilt because the control stamp cost $1 and if the plaintiff returned the coupon to Law Kam Hock the latter could remove the control stamp and use it on another coupon. At 4 p.m. on the 17th August Law Kam Hock informed his brother Philip Law that coupons bearing Nos. 100016-100020 and 100026 (which was the spoilt coupon) had not been returned to him. Philip Law informed the first defendant in his report that these coupon numbers had not been returned. That meant that the B and C portions of those coupons were not in the possession of the first defendant before the draw as required by the rules of participation.

The trial lasted 21 days and in his judgment dismissing the plaintiff's claim, the trial judge was of the opinion that the crucial issue of fact involved was whether the plaintiff had betted on, paid for and delivered the A, B and C portions of the said coupon bearing serial number 100026 to Law Kam Hock a director of the second defendants' firm who was the first defendant's agent in the betting game popularly known as Toto and received from the said Law Kam Hock into his own custody the A portion thereof at between 6-7 p.m. on the 12th August 1968 at his office on the 3rd floor of Nanyang Siang Pau Press Ltd. which was then situated in Robinson Road.

The trial judge did not believe the plaintiff on this crucial issue of fact for the reasons following: He was satisfied that Law Kam Hock never received

the A, B and C portions of coupon No. 100026 back from the plaintiff at any time and that the first time Law Kam Hock saw the A portion again was when he saw a reproduction of it in the Sin Min Jit Poh of the 21st August 1968 when he received an unpleasant shock because this bore the number of the coupon which the plaintiff had asked him to take home to mark and which the plaintiff the next day said had been spoilt. He accepted Law Kam Hock's version that the plaintiff had asked him to let him retain the remaining coupon No. 100026 in order to take it home to mark. The said coupon was never returned to Law Kam Hock by the plaintiff on the 17th August 1968. He further said that he believed Philip Law who gave evidence that the 60 coupons reserved by Philip Law for Law Kam Hock were not ready for delivery to Law Kam Hock before 2.30 p.m. on the 12th August and that they remained locked in some drawer or receptacle in Philip Law's custody until Friday 16th August when he handed them over to Law Kam Hock. The trial judge was also satisfied having heard all the evidence that the plaintiff only betted on two sets of coupons namely Nos. 100027 and 100029 and that he returned coupon No. 100028 unstaked and retained coupon No. 100026 without ever staking on it or returning it unstaked. The trial judge also came to the conclusion with regard to Law Kam Hock's evidence before the magistrate during the prosecution case against the plaintiff in January 1971 and also his statement made in the course of the trial before him that Law Kam Hock was fundamentally a truthful witness when he described what actually happened on the 16th August. Furthermore, Law Kam Hock and his brother, Philip Law, according to the trial judge did not strike him judging by their demeanour and general behaviour in the box throughout the protracted trial as being other than genuinely honest witnesses who were trying as best they could to think and recall with as great precision as they could humanly be expected to do minute details of every little thing they thought and did in relation to this matter on and after the 16th August 1968. He was satisfied that Law Kam Hock was telling him the truth when he said that he had delivered 4 sets of coupons Nos. 100026 to 100029 with the control stamps affixed between 3-4 p.m. on the 16th August to the plaintiff and that he received back from the plaintiff at 8 p.m. the same day coupons bearing Nos. 100027 and 100028 and 100029. The trial judge said that he did not believe the plaintiff who did not strike him as being a truthful witness because having regard to the probabilities of the case based on the evidence of witnesses on both sides and the view he had formed of their behaviour and credibility he had come to the conclusion that the plaintiff could not be believed. If at all, said the trial judge, the plaintiff's claim failed from the very beginning in that he gave the wrong date and time for the alleged purchase of the coupon of which there was no doubt in his mind whatever. The trial judge found that the plaintiff had not established his case because there was only the plaintiff's bare word for it and nothing more. On the other hand he was more than satisfied that the defence had rebutted whatever weak case the plaintiff might originally have had and accordingly dismissed the plaintiff's claim with costs. The plaintiff appealed against that decision.

In the appeal before us, counsel for the plaintiff contended that the trial judge erred in fact and in law in his finding that Law Kam Hock never received back the A, B and C portions of the coupon No. 100026 from the plaintiff at any time; that he drew wrong inferences; that there were discrepancies in the evidence; that the finding was against the weight of the evidence or unreasonable having regard to the evidence of Law Kam Hock and that the trial judge relied too much on the demeanour of witnesses.

In this connection, we quote the judgment of Lord Thankerton in *Watt or Thomas* v. *Thomas*,[1] at page 487 as follows: —

"Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion: The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion."

Again in the *Hontestroom*[2] case, Lord Summer at page 47 had this to say: —

"What then is the real effect on the hearing in a court of appeal of the fact that the trial judge saw and heard the witnesses? I think it has been somewhat lost sight of. Of course there is jurisdiction to retry the case on the shorthand note, including in such retrial the appreciation of the relative values of the witnesses, for the appeal is made a rehearing by rules which have the force of statute: It is not, however, a mere matter of discretion to remember and take account of this fact; it is a matter of justice and of judicial obligation. Nonetheless, not to have seen the witnesses puts appellate judges in a permanent position of disadvantage as against the trial judge, and, unless it can be shown that he has failed to use or has palpably misused his advantage, the higher court ought not to take the responsibility of reversing conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case."

Under our system of justice, the trial judge sees and hears the witnesses give their evidence and therefore has ample opportunity of watching the demeanour of the witnesses and hearing and evaluating the answers which they give to questions put to them either by counsel or the court. A perusal of the record of appeal will show that all the witnesses were subject to very lengthy and severe cross-examination and bearing in mind the fact that the trial lasted 21 days we have not the slightest doubt that the trial judge had every opportunity of carefully watching the demeanour and general behaviour of the various witnesses in the witness box and in particular, the plaintiff, Law Kam Hock and his brother Philip Law.

In this case the whole issue before the trial judge and now before us was simply this crucial question of fact *i.e.* whether the plaintiff had betted on, paid for and delivered the A, B and C portions of the said coupon No. 100026 to the 2nd defendants' firm on the 12th August 1968 when the plaintiff claimed that he did. On this question, the trial judge having heard evidence from both sides found that the plaintiff did not because he was satisfied that the plaintiff was not a witness of truth and on some matters had "lied

brazenly". It is an accepted principle that in a case before the appellate court where the issue is the finding of fact by a trial judge an appellate court is always reluctant to interfere with such finding for the simple reason that the trial judge had the advantage of seeing and testing the veracity of the witnesses before him unless of course it can be shown that the judgment was plainly wrong or unsupported by evidence.

Having perused the record of appeal and heard counsel's arguments, we came to the conclusion at the close of the arguments that there was sufficient evidence before the trial judge to satisfy him in accepting the 2nd defendants' version with which we agree that he had delivered 4 sets of coupons namely No. 100026, 100027, 100028 and 100029 with the control stamps affixed thereto to the plaintiff on the 16th August 1968; that the plaintiff, and this is not in dispute, had betted only on 2 coupons namely No. 100027 and No. 100029 and returned coupon No. 100028 unstaked; and that the 2nd defendants did not lose the B and C portions of the said coupon No. 100026 because they never received the A, B and C portions of the said coupon back from the plaintiff in the first place.

With regard to counsel's other arguments that the trial judge drew wrong inferences, that there were discrepancies in the evidence and that he relied too much on the demeanour of Law Kam Hock, it will be observed from his judgment that the trial judge had remarked that Law Kam Hock was far from being an impeccable witness in all respects. From this statement, we were of the view that the trial judge was aware of the discrepancies of Law Kam Hock's evidence but they were not so serious as to give him any apprehension as to his veracity on the principal issued involved. We came to the conclusion that the trial judge had properly weighed all the evidence and took into account whatever discrepancies there were before coming to his findings. For the reasons abovementioned, we dismissed the appeal for it is well established that an appellate court will not reverse the findings of the trial judge unless such findings were unsatisfactory by reason of material inconsistencies or that in coming to such findings he had not taken proper advantage of having seen and heard the witnesses or that his judgment was plainly unsound.

Appeal dismissed.

Solicitors: *J. B. Jeyaretnam & Co.; Boswell, Hsieh & Lim; R. Ramason.*

UNION CARBIDE SINGAPORE PRIVATE LTD. v. GOVINDAN NAIR

[A.C.J. (Wee Chong Jin C.J.) January 18, 1973]
[Singapore — District Court Appeal No. 20 of 1972]

Industrial Law — Holidays — Entitlement to paid holiday on days specified as public holidays — Monthly paid employee working on a five day week — Whether entitled to payment for public holidays falling on Saturdays — Employment Act (Cap. 122), ss. 38 and 41 — Holidays Act (Cap. 307).

The respondent was a monthly rated employee of the appellants. In accordance with the terms of a collective agreement the respondent worked a five day week from Mondays to Fridays; and under the terms of the collective agreement he was entitled, subject to the provisions of section 41 of the Employment Act, to a paid holiday at his ordinary rate of basic salary on such of the days specified as public holidays. There were four public holidays which fell on Saturdays in 1971 and the respondent claimed salary in lieu of these public holidays. The Assistant Commissioner of Labour allowed his claim for $111.36 and from this decision the appellant appealed to the High Court.

Held: the respondent was entitled to be paid at his ordinary rate of pay for the four public holidays which fell on Saturdays in 1971 and as his contractual monthly salary in 1971 did not include payment for Saturdays on which he was under no contractual obligation to work, he was entitled to the sum of $111.36 awarded to him and the appeal must be dismissed.

DISTRICT COURT APPEAL.

Harry Elias for the appellants.

A. Ramanujan for the respondent.

Wee Chong Jin C.J.: This is an appeal from a decision of the Assistant Commissioner for Labour allowing a claim by the respondent, M. P. Govindan Nair, against the appellants, Union Carbide Singapore Private Ltd., for $111.36 alleged to be due as salary in lieu of public holidays which fell on Saturdays during the year 1971.

The material facts are these. The respondent is a monthly-rated employee of the appellants and is employed as an accounts clerk. In 1971 his salary was $645 per month. Under clause 8(b) of a collective agreement, effective from 1st January 1971 to 31st December 1974, entered into between the appellants and Singapore Industrial Labour Organisation the hours of work for a non-plant clerical employee, of which the respondent is one, shall not be more than 44 hours per week which shall normally be as follows: -

"Mondays - Thursdays	:	8.00 a.m. to 12 noon 12.30 p.m. to 5.30 p.m.
Fridays	:	8.00 a.m. to 12 noon 12.30 p.m. to 4.30 p.m."

Under clause 26 of the collective agreement it is provided that subject to the provisions of section 41 of the Employment Act every employee shall be entitled to a paid holiday at his ordinary rate of basic salary on such of the days specified in the Schedule to the Holidays Act.

In accordance with clause 8(b) of the collective agreement the respondent being a non-plant clerical employee, was not obliged during 1971 to and did not work on Saturdays. He worked a five-day week from Mondays to Fridays and forty four hours per week. In 1971 there were four public holidays under the Holidays Act which fell on Saturdays. In respect